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SUBJECT: Legal Aid Attorneys Chronicle Advances,
Challenges in Labor Law Enforcement

Sensitive But Unclassified; Handle Accordingly

11. (U) Summary: Labor Intern, accompanied by Labor Officer, met with the Director and Staff attorneys of the Peking University Women's Legal Aid Clinic June 9, 2006. The attorneys said that, in their opinion, China's current legal system and labor law enforcement mechanisms are better than they were twenty years ago, but have a long way to go. While China's labor laws have strong protections for workers, China lacks the ability to ensure that the law is enforced. The legal aid lawyers argue that the establishment of an independent inspection system would prevent many violations of the labor law and protect workers, especially in child labor, violation of wage and hour laws and firing female workers for pregnancy. End Summary.

Labor Laws, Enforcement Mechanisms Improving

12. (U) On June 9, 2006, Labor Officer and Labor Intern met with Guo Jianmei, Director; Xu Weihou, Vice Director and staff attorneys of Peking University Women's Law Studies and NGO Legal Aid Center to discuss enforcement of China's Labor Law. According to Director Guo, China's labor laws and enforcement mechanisms are getting better. In the past 10 years, many laws have been written and many implementation measures have been established at the provincial, municipal, and regional levels, Guo said. As one example, the draft of the Labor Contract Law that was issued in March 2006 states that employers must have written contracts with their employees. This is to ensure that workers have information about the job and pay, and to provide a legal document that can be enforced. However, as Director Guo pointed out, the draft had been somewhat controversial because investors are worried that it will tip the balance in favor of the worker instead of the employer.

Legal Environment Improving with More Transparency

¶3. (U) Furthermore, Vice Director Xu said, the overall legal environment is getting better. Regulatory transparency has increased, citizens have been granted more rights to speak out, political sensitivities have decreased, and the media is playing a greater role, she said. She cited the case of a woman in Hunan Province who the week before had been arrested by railway police for collecting empty bottles. The woman was charged with "disturbing the peace" and was detained for five days. However, this incident was brought to the media's attention and stories were broadcast on television and appeared on the internet. The media pressure as well as expressions of concern from citizens reached the senior local official, who ordered the woman released immediately. Follow-on stories in the media resulted in the railway company paying the woman compensation of 6,000 rmb (about USD 750).

Improvements in the Judiciary Apparent

¶4. (U) Progress has been made in other areas as well, said Director Guo. Specifically, the quality of judges has been improved, and the increasing soundness of the judicial system is evident. In the past, many retired military personnel were appointed as judges despite having no formal training or background. This no longer takes place. Currently, judges must pass an exam and receive a certificate before they can undertake their judicial responsibilities. China's Supreme People's Court now issues judicial interpretations, case handling guidance,

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and other materials to help judges conduct court business, Guo said.

Future Challenges: Women's Rights in the Workplace

¶5. (U) China must confront a number of future challenges in the labor sector, both Guo and Xu emphasized. In Director Guo's opinion, women have fewer rights in the workplace now than they had 20 years ago. Moreover, minority women have even fewer rights. There are two reasons why this is the case: 1) they have little or no idea of their rights; and 2) once they become aware of their rights, they do not know to whom to turn to advice or help, if there is any available.

¶6. (SBU) Equally importantly, there is a discrepancy between international and domestic labor law standards, Vice Director Xu said. China has accepted an increasing number of international law standards, but that has been done only for the nation's political image, while very little has been done to actually enforce the laws. One example of the international-domestic labor law discrepancy in China is that most multinational corporations have good internal regulations mandating equal treatment and forbidding discrimination on the basis of gender, but similar provisions are not yet included in China's laws, said Xu.

¶7. (U) In addition, Vice Director Xu said, conflict arose between international investment and domestic labor laws when the Central Government proposed the Labor Contract Law draft in March. According to Xu, thousands of foreign funded companies in Shanghai said that if the law passed, they would withdraw their investments.

Labor Laws Do Not Match Current Labor Situation

¶8. (U) The change from a planned economy to a market-

driven economy created labor issues that the Central Government has yet to rectify, the legal aid attorneys said. Under the planned economy, most workers worked in State-Owned Enterprises (SOEs) and were well protected by the law because the laws were written to apply to SOEs, Vice Director Xu said. With the huge shifts from the planned to the market economy, and from SOEs to private businesses, most workers now work in non-publicly owned, private sector enterprises, or in the informal sector, in small restaurants, family owned businesses, or as household staff. As a result, the labor laws that were set up to meet the needs of the planned economy are simply not adequate to cover the current range of employment problems workers face, said Vice Director Xu. SOEs provided workers with better protections under the planned economy than do private companies in the current market-driven economy.

19. (U) Vice Director Xu provided three examples: 1) In the past female employees working in SOEs received paid maternity leave, as required by law. Now, however, there are many reported cases of women being fired immediately after the employer discovers that they are pregnant. 2) In Zhejiang Province a factory building collapsed and killed 20 workers, five of whom were child laborers. Vice Director Xu visited this factory with the Ministry of Labor and Social Security (MOLSS), and found a number of other family-sized factories who had also hired child laborers. The managers of these factories said that they did so because children are cheaper, easier to manage and generate higher profits. 3) Several weeks ago, it was reported in the news media that a woman in Sichuan Province had died of over work (guo lao si) after having worked 10-hour days for

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several consecutive days. The market economy gives employers more choices, Director Guo said, but what choices are there for workers? Vice Director Xu traveled with MOLSS to Zhejiang, Hunan, Hainan and Guangxi Provinces in 2002; she discovered that employees had neither an awareness of their rights as workers or any idea of what constituted an abuse of their rights.

Needed: Inspectors Free of Local Influence

110. (U) Attorneys Guo and Xu both agreed that the main reason for labor abuses throughout China is because of the collaboration between corrupt local officials and businessman. Although MOLSS and the local labor and social security bureaus (LSSB) have established an inspection mechanism, Guo and Xu say that local officials have a special relationship with local businessmen (guanxi). These officials are forewarned about inspections, and are able to remove child laborers, cut back on excessive hours, and make it appear as though work is being conducted in accordance with the law, even when that is definitely not the case. Corruption thus compounds the problems of an inspection system that is both understaffed and overworked, the attorneys said. Directors Guo and Xu both maintain that the best way to foil corruption is to establish an investigative team that is independent of local officials. Such a system, they said, would give the investigative team the ability to carry on difficult investigative responsibilities without worrying about the consequences of cracking down on the child labor, wage and working hour violations and unsafe working conditions that continue to plague China.

111. (SBU) Comment: This group of legal aid attorneys, whose clinic handles numerous important cases, has provided an insightful description both of the advances that China has made in enforcing the labor law, and of the kinds of changes China still must make to meet the ongoing challenges of protecting Chinese workers.

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